IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATIONS Nos. 537/2001, 538/2001, 539/2001 and 540/2001.

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VENILAL I MISTRY

Versus

NAVSARI COTTON & SILK MILLS CO. LTD.

Appearance:

1. Civil Revision Application No. 537 of 2001

HL PATEL ADVOCATES for Petitioner No. 1

MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/07/2001

COMMON ORAL JUDGEMENT

Rule. Learned Advocate Mr. A.K.Clerk waives service of rule on behalf of the respondent in each of the matters.

The above stated matters being cognate, by consent of parties are taken up for final hearing.

1. That the petitioner in each of the matters has challenged the order dated 27th April, 2001 passed by the Civil Judge (S.D.), Navsari, in the proceedings of Special Civil Applications nos.74/1999, 88/1999, 72/1999 and 71/1999 below Exhs.58, 57, 56 and 66 respectively.

2. The respondent in each of the matters had filed the above stated suit against the respective petitioners claiming vacant possession of the suit premises. That pending the proceedings of above stated suits, the respondent-Company moved an application Exh.58, 57, 56 and 66 respectively with a prayer to amend the plaint by deleting the word (Manager) Bhupendra Mohanlal Desai and substituting the word (Executive Director) Jayantibhai R. Patel in the title cause of the respective suit and to permit deletion of verification made in the name of (Manager), Bhupendra Mohanlal Desai by substituting the word (Executive Director), Jayantibhai R. Patel and also sought permission to sign the pleadings by Jayantibhai R. Patel according to the amended plaint.

3. That the trial Court after hearing the parties disposed of the said application by common order dated 27-4-2001 and allowed the applications in the respective suit and also permitted Executive Director of the plaintiff Jaynatibhai R Patel to sign and verify the plaint and Vakalatpatra by necessary amendment. The petitioners have challenged the validity of the said order on numerous grounds.

4. Learned Advocate Mr. Asim Pandya on behalf of M/s. H.L. Patel Advocates have referred to and relied on the provisions of O.29 R.1 and O.6 R.14 and has urged that pleadings are required to be signed in the mode and manner as prescribed vide O.6 R.14 of the Civil Procedure Code("CPC" for short). However, when the party to the proceedings is a Corporation, pleadings are required to be signed by the Corporation as provided under O.29, R.1, CPC. That accordingly pleadings could be signed and verified on behalf of the Corporation by the Secretary or by any Director or other principal Officer of the Corporation who is able to depose to the facts of the case.

Shri Pandya has referred to deposition of PW 1 Bhupendra Mohanlal Desai in the proceedingsw of said suits and has urged that according to statement made on

oath by the witness at the relevant time, said Bhupendra Mohanlal Desai was not holding any post in the respondent -Mill Company, and thereby, he had no power or authority to sign the pleadings on behalf of the Company. Furthermore, in the application claiming amendment, the respondent has averred in paragraph 5 that as per Resolution no.42 of the Board of Directors dated 27-5-1999 one Naishadbhai Desai and Jayantibhai R Patel are authorised to sign documents etc. on behalf of the Mill Company. However, nowhere in the application the respondent-plaintiff has mentioned that the act of Bhupendra Mohanlal Desai signing the plaint of the above stated matters in the capacity as a Manager have been ratified by the plaintiff-Mill Company.

5. It is also contended that the trial Court has erred by granting the application without considering the aspect that said application for amendment is moved at the fag end of the trial when the evidence of both the parties are concluded and the matter is pending for arguments. That by granting the application the trial Court has deprived the petitioners-defendants from their valuable right of defence to the effect that the plaint as filed was liable to be rejected and the respondent-plaintiff was not entitled to relief as prayed in the suit.

6. Mr. Pandya has also contended that while passing the impugned order, the trial Court has misapplied the ratio of the decision in the case of KISHANCHANDRA CHANDANSINGH RAO V. VASUMATIBEN MAGANLAL MANANI reported vide 1996(2) G.L.R p.714, inasmuch as facts situation involved in the reported matter being different from the facts situation in the present matters. That in the case of reported matter, the husband of the plaintiff was holding the power of attorney and verified the plaint. That subsequently, the Appellate Bench has permitted the plaintiff to sign, while, in the instant case, no cause is made out by the respondent-plaintiff as to why authorised person as per Resolution no.42 dated 27-5-1999 did not sign and verify the plaint at the initial stage.

7. In order to support the submission, reliance is placed on the observation made in the matters of (1) SETH KIRPAL CHAND vs. THE TRADERS BANK LTD.,_AIR 1954 (J & K) p.45, (2) TURNER MORRISON & CO. LTD vs. HUNGERFORD INVESTMENT TRUST LTD.,AIR 1972 SC 1311 (para 17) and (3) PUNJAB ZAMINDARS BANK LTD. Vs. MADAN MOHANSINGH AND ORS.,AIR 1936 Lahore p.321 (para-1).

8. The submission urged at the Bar on behalf of the

petitioner could hardly be accepted for more than one reason.

9. It would be pertinent to note that the respondent-plaintiff had moved the amendment applications stating that the application is moved under O.6 R.14 and 17 read with Sec.151 of the Civil Procedure Code. Furthermore, in the first paragraph of the application, the averments made are to the effect that plaintiff-Company has filed the suit and the contents of the plaint are correct and the said contents shall also be a part of the present application. It is stated in paragraph 2 that suits are instituted in the name of Navsari Cotton and Silk Mills Ltd. as plaintiff and when the plaints were lodged one Bhupendra Mohanlal Desai was in charge of the administration on behalf of the Mill-Company at Navsari, and thereby, he has signed and verified the plaint. That said Bhupendra Mohanlal has been discharging the duties as Manager of the said Mill-Companty since 1994 and in the said capacity he has signed and verified the plaint, and thereby, in substance the suits are filed for and on behalf of Navsari Cotton and Silk Mills Ltd. However, to obviate the technical objection raised on behalf of the defendant-petitioner, it is necessary to amend the plaint as prayed thereof. That the said averments in terms suggest that M/s. Navsari Cotton and Silk Mills Ltd.-plaintiff of the said suits has ratified the act of signing and verifying the plaint by said Bhupendra Mohanlal Desai in the capacity of a Manager. Furthermore, there is no bar in the Code of Civil Procedure for claiming amendment in the plaint and Court can exercise power under Sec.151 to prevent the abuse of power and to meet the ends of justice.

10. It would be also pertinent to note that from the averments in the application, it is abundantly clear that Bhupendra Mohanlal Desai who had signed and verified the plaint was authorised to administrate the affairs of M/s. Navsari Cotton and Silk Mills Ltd., Navsari. Thereby, in the plaint in respect to a suit for eviction, the said person was not only a principal officer, but a person conversant with the facts of the suit who is able to depose as to the facts of the case within the meaning of O.29 R.1, Civil Procedure Code. As such., it could not be said that plaints were defective since the date of filing and vide impugned order it is sought to be rectified so as to deprive the defendant-petitioner from the substantive defence. Furthermore, in the matter of K.C. Rao(Supra), this Court after considering the various views expressed by different High Courts in respect to provisions of O.16 R.14 has observed in para

25 as under:

".....if predominance of judicial opinion quoted hereinabove is taken into consideration where number of High Courts including the Bombay High Court and Gujarat High Court have consistently taken the view that non-compliance of Order 6 Rule 14 C.P.C. is merely a formal defect or procedural irregularity which can be cured and/or corrected or ratified at any stage of the proceedings including the appellate stage irrespective of bar of limitation. It is also required to be noted that in the context of amendment of pleading under O.6 R.17 of C.P. Code even the Apex Court has now permitted amendment of pleading even when such amendment would in a given case deprive the other party of his right of pleading on limitation as his defence. In the present case, since the amendment is merely a formal or technical nature, the plaint as instituted cannot be said to be invalid on the date of the suit and if the plaint is not invalid regularising such plaint by validating such plaint by permitting the party to sign or verify the pleading it cannot be said that any substantive averment is introduced whereby the right to plead limitation should be reserved in favour of other party. I, therefore, do not find any substance in the aforesaid objection."

11. In view of the observation made by this Court in the above stated matter, there is no substance in the contention raised on behalf of the petitioner so as to establish any legal error in the impugned order. That in the absence of jurisdictional error, on the basis of foregoing discussion, it has to be held that the impugned order being just, proper and reasonable, no interference of revisional Court is warranted.

12. As a result, all the above stated four Revision Applications fail and stand disposed of as rejected with no order as to costs. Rule is discharged in each of the matters.

(A.K.Trivedi,J.)

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